

June 1, 2021

VIA ECF

The Honorable Valerie E. Caproni
United States District Judge,
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: In re London Silver Fixing Antitrust Litigation,
Case No. 14-MD-2573 (VEC) (S.D.N.Y.)**

Dear Judge Caproni:

Pursuant to Part 8(a)(1)(vii) of the Discovery Schedule (Dkt. 371), as amended by the Court's May 24, 2019 Order, the parties jointly submit this letter updating the Court on the parties' recent discovery progress.

1. Fact Depositions

Limited Extension for Completion of Certain Fact Depositions: On May 4, 2021 the parties submitted a stipulation agreeing to a limited extension of the deadline for the completion of certain depositions. The stipulation was so ordered by the Court on May 5, 2021. Pursuant to this stipulation, certain fact depositions can be scheduled after May 26, 2021 (the end of fact discovery), but no later than June 25, 2021 (for certain former BNS and HSBC employees) or July 16, 2021 (for two former Deutsche Bank employees).

HSBC: Plaintiffs took the depositions of former HSBC employee David Rose on March 22, 2021, current HSBC employee Michael Corbi on April 7, 2021, former HSBC employee Kevin Danca on May 5, 2021, former HSBC employee Simon Atkinson on May 21, 2021, and former HSBC employee Jeremy Charles on May 27, 2021. Additionally, the parties have scheduled the deposition of former HSBC employees Peter Drabwell for June 16, 2021 and the deposition of Darren Botha for June 17, 2021.

One former HSBC employee on Plaintiffs' witness list, Michael Connolly, resides in the United States upon HSBC's information and belief. Connolly has not agreed to representation by HSBC's counsel, and HSBC is not aware of any attempts by Plaintiffs to issue a third-party subpoena to Connolly. Plaintiffs intend to schedule Mr. Connolly's deposition during the remaining period for HSBC depositions.

Finally, on April 26, 2021, Plaintiffs sent an email to HSBC seeking to replace former employee Joseph Stefans with current employee Paul Voller on their witness list. The parties will discuss this proposal.

BNS: Plaintiffs took the deposition of former BNS employees Simon Weeks on May 6, 2021, Ian Plowman on May 25, 2021, and Robert Mizrahi on May 26, 2021. Defendants cross-deposed Messrs. Weeks, Plowman, and Mizrahi. The parties have scheduled the deposition of former BNS employees Tyrone Green for June 10, 2021 and Isabelle Garreau for June 14-15, 2021.

Plaintiffs: Defendants took the depositions of (i) KPFF, (ii) J. Scott Nicholson on May 12, 2021, (iii) Don Tran on May 17, 2021, (iv) Laurence Hughes on May 18, 2021, (v) Kevin Maher on May 19, 2021, and (vi) John Hayes on May 21, 2021.

On July 3, 2019 and November 20, 2019, Defendants inquired of Plaintiffs about the completeness of the document production for Mr. Hughes, noting that records produced at that time did not reflect any silver-related transactions during the relevant period. On September 17, 2019 and January 3, 2020, Plaintiffs confirmed the completeness of their productions. The record developed during the testimony of Mr. Hughes on May 18 confirmed that records produced to date showed no relevant silver transactions during the class period, even though Mr. Hughes recalled searching for and providing such records to counsel, including from the broker TD Ameritrade, who was not listed on Mr. Hughes's Rule 26(a)(1) Initial Disclosures. (*See Hughes Rough Tr.* at 62, 65.) On May 25, 2021, one week after Defendants deposed Mr. Hughes, Plaintiffs produced documents from the TD Ameritrade account appearing to reflect potential silver-related transactions by Mr. Hughes during the relevant period (between 2007 and 2013). Defendants are reviewing Plaintiffs' untimely production and may seek the Court's leave to conduct a further deposition of Mr. Hughes to ask him about these materials produced after his deposition.

Pursuant to Rule 2(c) of Your Honor's Individual Rules, Plaintiffs are submitting today an application seeking permission to amend the Fourth Amended Discovery Schedule entered in this action on May 5, 2021, for the sole purpose to allow named individual Plaintiff Christopher DePaoli to be permitted to sit for his deposition on Sunday, June 6, 2021 or Sunday, June 13, 2021. Plaintiffs will explain the basis for their request in their application, and will also state Defendants' position on the request.

Deutsche Bank: Plaintiffs plan to take the deposition of James Vorley on June 16th. The Fourth Amended Fact Discovery Schedule provides a deadline of July 16, 2021 to depose the second former Deutsche Bank employee.

2. 30(b)(6) Depositions

Plaintiffs took the 30(b)(6) deposition of HSBC on March 5, 2021. Plaintiffs have advised HSBC that they may seek to take an additional 30(b)(6) deposition day on trade data related topics. HSBC has not agreed to offer a 30(b)(6) designee after the May 26 fact discovery deadline and HSBC's position is that the Fourth Amended Discovery Schedule does not contemplate such a deposition.

The parties took the 30(b)(6) deposition of BNS on May 13 and 14, 2021. The evening prior to Plaintiffs 2-day 30(b)(6) deposition of BNS, BNS made a supplemental production of documents. Pursuant to an agreement between the parties, Plaintiffs will continue the 30(b)(6) deposition on June 15th for a limit of one hour to question BNS regarding these documents.

3. Audio Files

On March 12, 2021 Plaintiffs sent separate letters to BNS and HSBC making what Plaintiffs contend are targeted audio file requests. On April 7 and 16, 2021, HSBC and BNS, respectively, responded to Plaintiffs' letter objecting to the requests, noting that they (i) were bulk, rather than targeted, audio requests; (ii) called for the production of a much larger quantity of audio than Defendants produced in their "bulk" audio productions (e.g., from HSBC, "all custodial audio files of Simon Atkinson and David Rose" for a six-hour period each day from March 2010 to December 2011); (iii) were made on the last day permitted under the Third Amended Fact Discovery Schedule (after having made no "targeted" audio requests since the bulk requests were made in early 2019); and (iv) failed to include sufficient detail to locate the individual files.

Plaintiffs met and conferred with HSBC on their audio file requests on May 25, 2021 and continue to do so. Plaintiffs sent a letter to BNS on May 12th narrowing the scope of their targeted audio file request, to which BNS expects to respond shortly.

4. Defendants' Transaction Data

Plaintiffs met and conferred with counsel for HSBC on March 11, 2021, during which HSBC answered numerous questions posed by Plaintiffs about HSBC's transaction data. On April 19, 2021, Plaintiffs sent HSBC a letter asking further questions about HSBC's transaction data. The parties met and conferred on May 25, 2021, and HSBC provided Plaintiffs with information responsive to their April 19th letter, and committed to answer the remaining questions by letter.

As described in the parties' last status letter (Dkt. No. 524), in April 2021, the parties exchanged letters regarding questions raised by Plaintiffs about BNS's transaction data. On May 4, 2021, Plaintiffs sent BNS a letter clarifying seven questions that Plaintiffs had asked BNS on April 26, 2021. On May 20, 2021, Plaintiffs sent another letter to BNS containing 18 questions (many with multiple subparts) about BNS's transaction data, "almost all" of which Plaintiffs contend had been pending since August 14, 2020. Plaintiffs demanded that BNS respond to all outstanding questions by May 24, 2021 or Plaintiffs would seek Court intervention. BNS responded on May 21 that it would respond to Plaintiffs' May 4 questions by the close of fact discovery, but reserved all rights with respect to the 18 questions which BNS contends were raised for the first time on May 20, 2021. BNS further requested that Plaintiffs identify where they had previously asked any of the 18 questions. BNS responded to Plaintiffs' May 4 questions on May 26, and Plaintiffs' expect to respond to those letters shortly.

5. Interrogatories

On April 26, 2021, Plaintiffs served Defendants with a second set of interrogatories. Defendants served their responses on May 26th, which Plaintiffs are currently reviewing.

6. Third Party Unmasking

Plaintiffs and Defendants believe that they are close to wrapping up discussions with multiple third parties to obtain consent to unmask the third parties' names in Defendants' produced trade data and in the data that the CME is expected to produce. Each of the third parties has proposed draft stipulations, which Defendants are reviewing.

Respectfully submitted,

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